



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

*Ch*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/334,160	06/16/99	AUGUSTINE	S AUGA01000014

QM12/0908

TERRANCE A MEADOR  
GRAY CARY WARE & FREIDENRICH  
401 B STREET  
SUITE 1700  
SAN DIEGO CA 92101

EXAMINER

RAM, J

ART UNIT

PAPER NUMBER

3739

DATE MAILED:

09/08/00

*4*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/334,160

Applicant(s)

AUGUSTINE ET AL.

Examiner

Jocelyn D Ram

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 June 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "70" has been used to designate both "inflating hose" and "drape-forming section" on page 17. Correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 110. It is suggested that "110" on page 18, line 23, be changed to --115--. Correction is required.

### ***Specification***

The disclosure is objected to because of the following informalities: page 12, line 21, delete the second "sheet". Appropriate correction is required.

Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

Art Unit: 3739

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 26-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,184,612, in view of 4,572,188. Augustine (5,184,612) shows all of the structural limitations of the instant invention, however he does not explicitly state the heater/blower assembly in the claims. Augustine et al. (4,572,188) shows such a heater/blower assembly that allows the user to set the air temperature to a predetermined value. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize this adjustable heat source for the air supply to the blanket for safety means.

Claims 26-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 5,300,102 in view of 4,572,188. Augustine et al. (5,300,102) shows all of the structural limitations of the instant invention, however he does not explicitly state the heater/blower assembly in the claims. Augustine et al. (4,572,188) shows such a heater/blower assembly that allows the user to set the air temperature to a

predetermined value. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize this adjustable heat source for the air supply to the blanket for safety means.

Claims 26-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 5,324,320 in view of 4,572,188. Augustine et al. (5,324,320) shows all of the structural limitations of the instant invention, however he does not explicitly state the heater/blower assembly in the claims. Augustine et al. (4,572,188) shows such a heater/blower assembly that allows the user to set the air temperature to a predetermined value. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize this adjustable heat source for the air supply to the blanket for safety means.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 29, 32 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Augustine et al. (4,572,188). Augustine et al. shows a system for treating hypothermia comprising: an inflatable cover (14); an undersurface (26) in the inflatable cover (14) for expelling warmed air from the inflatable cover; a heater/blower assembly

(40) for maintaining the temperature of the warmed air expelled through the undersurface at a predetermined temperature (col 3, lines 59-62), wherein the undersurface includes an array of apertures (32) for expelling the warmed air

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. (4,572,188). Although Augustine et al. does not explicitly state the temperature range for the air in the inflatable blanket, since the inventions are both used for the same purpose of warming a hypothermic patient and have the same structural limitations, it would have been obvious to one of ordinary skill in the art at the time of the invention to choose a predetermined temperature range to achieve the best heating results.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dingman (3,444,922), Popp (1,777,982) and Shippee (3,230,556) show thermal air blankets with a heater/blower assembly for controlling the temperature of the air supplied to the patient.

Art Unit: 3739

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn D Ram whose telephone number is (703) 308-6392. The examiner can normally be reached on M-F, 6:30-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

JR  
September 5, 2000



LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700